

based on the self-serving predictions of potential competitors, which were of the same ilk as the arguments they will make in opposing this application.

The New Jersey Corridors. When NYNEX and Bell Atlantic sought permission to operate as interexchange carriers in limited geographic corridors during the early 1980s, the

accordance with FCC rules. Memorandum Opinion and Order, Petition for Emergency Relief and Declaratory Ruling Filed by the BellSouth Corporation, 7 FCC Rcd 1619 (1992). This Commission later stated that it found the Georgia PSC's finding of improper practices unpersuasive on the merits. Brief for Respondents, California v. FCC, No. 92-70083, at 59-61 (9th Cir. filed July 14, 1993).

There likewise is no merit to contentions that BellSouth Telecommunications, Inc. ("BST") has discriminated against unaffiliated payphone service providers with respect to network access. This Commission has approved BST's CEI plan, pursuant to which BST offers independent payphone providers nondiscriminatory access to the regulated payphone services used by its wholly-owned payphone affiliate, BellSouth Public Communications, Inc. ("BSPC"). See Order, BellSouth's Corporation's Offer of Comparably Efficient Interconnection to Payphone Service Providers, 12 FCC Rcd 4318 (1997). BST has followed the terms of its CEI plan and will continue to do so after section 271 relief is granted.

Equally meritless are recent claims before this Commission that BSPC has impermissibly interfered with contracts between its payphone customers and interexchange carriers. Section 276 of the Communications Act and this Commission's payphone orders specifically authorize BSPC to negotiate, select, and contract with interexchange carriers on behalf of its payphone customers. BSPC has mailed materials to its payphone customers advising them of this fact. Nowhere do these materials suggest that location providers must reevaluate, let alone change, existing contracts with interexchange carriers. To the contrary, BSPC expressly requires that any such contracts be allowed to run their term unaffected. Nor is there any truth to the assertions that BSPC discriminates against payphone subscribers who do not authorize BSPC to negotiate with interexchange carriers on their behalf. BSPC currently imposes a \$15 fee on a small minority of its payphones that generate insufficient traffic to recover their costs. BSPC anticipates that, when authorized to do so, it will be able to make up the revenue shortfall on these payphones by negotiating with an interexchange carrier to carry the traffic from these payphones. But where the location provider chooses to select an interexchange carrier itself, BSPC is unable to cover the costs of the payphone. BSPC thus charges a monthly fee of \$15 to location providers whose phones do not cover their costs and who elect not to appoint, or are precluded by contract from appointing, BSPC as their agent. This charge is entirely consistent with the letter and the spirit of section 276 and with this Commission's payphone orders.

district court credited suggestions that allowing such service would give "the Operating Companies the same incentive to discriminate against new entrants that they had while part of the integrated Bell [s]ystem," and that it "may be tantamount to giving to the Operating Companies a monopoly over certain interstate traffic." United States v. Western Elec. Co., 569 F. Supp. 990, 1018 n.142, 1023 (D.D.C. 1983). Yet these (now merged) Bell companies do not dominate corridor traffic. By AT&T's own count, Bell Atlantic has less than 20 percent of the corridor business. AT&T Waiver Petition at 3. AT&T and MCI have sought authority to lower their long distance rates in the corridors while they raise them elsewhere, not because of any leveraging of local "bottlenecks," but rather because their prices are being undercut. See AT&T Waiver Petition at 5; MCI Comments at 3. Disproving the predictions of potential competitors, Bell Atlantic and NYNEX have benefitted consumers by lowering prices.

SNET in Connecticut. Similarly, all the evidence suggests that SNET's competitive success in Connecticut is due to its lower prices, not to any anticompetitive behavior. See Hausman Aff. ¶¶ 16, 22, 41. AT&T does not allege that SNET has gained market share through anticompetitive conduct, but rather attributes SNET's success to lower prices. Id.; see also Gilbert Aff. ¶ 53 (no complaints against SNET or Frontier Communications). Moreover, competition between SNET and AT&T is vigorous, leading AT&T to ask for permission to reduce prices along with SNET in order to preserve its market share. See supra at 76-77.

GTE/Sprint. GTE's ownership of Sprint proves the same point on a larger scale. See Gilbert Aff. ¶¶ 51-52. As the fourth largest local exchange carrier and the incumbent carrier across large geographic areas, GTE had the same theoretical incentives to impede interexchange

competition as would a Bell company entering the long distance market today. See United States v. Western Elec. Co., 993 F.2d at 1579 (explaining relevance of GTE experience). Indeed, when seeking to place conditions on GTE's purchase of Sprint in 1984, the Department of Justice argued that because GTE "provide[d] in the same market both local monopoly telecommunications services and competitive long distance services, it" necessarily would have "the incentive and ability to foreclose or to impede competition in the competitive (or potentially competitive) market by discriminating in favor of its own long distance carrier." United States v. GTE Corp., 603 F. Supp. 730, 732 (D.D.C. 1984).

Yet after the acquisition was completed, Sprint never was able to accumulate disproportionate market share in areas served by a GTE telephone company. The Department of Justice found no pattern of discrimination by GTE in favor of Sprint, Gilbert Aff. ¶ 52, and even AT&T and MCI have had to concede that GTE's monopoly power in the local exchange never enabled it to "achieve market power" in its in-region interLATA market.⁸⁷ As further evidence of its inability to earn monopoly profits in the long distance business, GTE sold Sprint in three installments between 1986 and 1992. Gilbert Aff. ¶ 51. GTE recently entered long distance as a new entrant — in the same way that BellSouth will enter — and has competed effectively with AT&T not through any anticompetitive conduct but rather through residential prices that are 17.2 percent lower. Hausman Aff. ¶ 23.

⁸⁷. MCI's Initial Comments to the Department of Justice Concerning the Motion to Vacate the Judgment and NYNEX's Request to Provide Interexchange Service in New York State at 58, United States v. Western Electric Co., No. 82-0192 (D.D.C., Dec. 9, 1994); see AT&T's Opposition to the Four RBOCs' Motion to Vacate the Decree at 159, United States v. Western Electric Co., No. 82-0192 (D.D.C. Dec. 7, 1994).

Cellular Services. Similarly, given that cellular carriers and interexchange carriers have similar local interconnection requirements, Bell companies have had essentially the same incentive and ability to act anticompetitively against rival cellular carriers as they would have to act anticompetitively against other interexchange carriers in in-region states. See Hausman Aff. ¶¶ 33, 40. As with interexchange services, moreover, predictions of future harm to the public interest preceded Bell company participation in the cellular business. See, e.g., 825-845 MHZ Inquiry, 86 F.C.C.2d at 469, 530-31, 540-43, 550-51, 643 (summarizing comments of Millicom, Telocator, and the Department of Justice).

Yet, this theoretical incentive of wireline carriers to inhibit cellular growth has not created any actual problems. The Commission has confirmed "the infrequency of interconnection problems" between local exchange carriers and unaffiliated cellular providers. Eligibility for the Specialized Mobile Radio Servs., 10 FCC Rcd 6280, 6293, ¶ 22 (1995). Indeed, "the wireless communications business is one in which relatively small, entrepreneurial competitors have often been as successful as . . . the BOCs." Applications of Craig O. McCaw and AT&T Co., 9 FCC Rcd at 5861-62, ¶ 38.

The Bell companies, who would know if incumbent local telephone companies could give their cellular affiliates an unfair competitive edge, have invested heavily in cellular systems that compete with the incumbent LEC's systems. BellSouth, for instance, competes against an incumbent LEC's wireless affiliate in Hawaii, California, Illinois, and Indiana. Such investments would never be made if Bell companies really believed that LECs can frustrate fair competition. Even AT&T effectively has agreed that the Bell companies have no ability to overwhelm

competitors in wireless; it bought the nation's largest cellular carrier and has invested billions more for PCS licenses, investments that would not make sense if the incumbent LEC had a clear edge.

E. The Effect of BellSouth's Entry on Local Competition

Even if the Commission follows the policy suggested in its Michigan Order and focuses primarily on local competition, it should find that approving BellSouth's application is in the public interest. The expert agency on local telecommunications in Louisiana found that "consumers in Louisiana, both local and long distance, would be well served by BellSouth's entry into the long distance market." Compliance Order at 14 (emphasis added). The Louisiana PSC's conclusion is consistent with common sense, economic theory,⁸⁸ and the findings of other State commissions. For example, the South Carolina PSC explained that allowing BellSouth into long distance "will create real incentives for the major [interexchange carriers] to enter the local market . . . , because they will no longer be able to pursue other opportunities secure in the knowledge that [BellSouth] cannot invade their market until they build substantial local facilities." South Carolina Order at 67. The Oklahoma Corporation Commission similarly determined in connection with section 271 relief that "once full long distance competition is opened up in Oklahoma, the major competitive providers of local exchange service will take notice and adjust their respective

⁸⁸. See Woroch Aff. ¶¶ 17-19, 79-86 (noting incentives of CLECs, absent BellSouth interLATA entry, to "go slow" in Louisiana and to pursue markets that offer greater profit margins); Hausman Aff. ¶ 9 (noting that, following BellSouth interLATA entry, interexchange carriers "and other competitors will be required by competition to respond with competitive offerings").

business plans to move Oklahoma closer to the top of their schedules, resulting in faster and broader local exchange competition for Oklahoma consumers.”⁸⁹

Approving BellSouth’s application, moreover, would provide the Big Three long distance carriers with the ability to compete more effectively as CLECs. These carriers are temporarily prohibited from bundling any wholesale services they obtain from BellSouth in Louisiana with interLATA services. BellSouth’s entry will release the interexchange carriers from this prohibition, 47 U.S.C. § 271(e)(1), and produce the result Congress envisioned: enhanced competition in both local and long distance markets. Conference Report at 1 (Act intended to “ope[n] all telecommunications markets to competition”); see Gilbert Aff. ¶¶ 18-23 (noting benefits to competition and consumers of bundled offerings); Hausman Aff. ¶ 7 (same).

The Act’s prohibition on bundling by the major carriers pending BellSouth’s interLATA entry is the only barrier remaining to full local competition in Louisiana. “[A]ll procompetitive entry strategies are available to new entrants” in the State⁹⁰ and the currently limited extent of wireline, facilities-based local competition is due solely to the business decisions of competitors. See Woroch Aff. ¶¶ 51-53 (discussing Louisiana PSC policies and absence of municipal entry barriers). When BellSouth has opened its local markets through compliance with the checklist, it is simply wrong for any party to suggest that there would be consumer benefits from further

⁸⁹. Comments of the Oklahoma Corporation Commission at 11, Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Oklahoma, CC Docket No. 97-121 (FCC filed May 1, 1997).

⁹⁰. Michigan Order ¶ 387.

delaying certain long distance competition in the name of possible local competition — particularly where the Louisiana PSC has authoritatively found that local competition will increase as a result of approving this application.

The Louisiana PSC's efforts to promote local competition in the State are extensive. In addition to reviewing scores of interconnection agreements and applications for CLEC certification, presiding over arbitrations, establishing cost-based rates in its Pricing Order, and reviewing BellSouth's Statement and its eligibility for interLATA relief, the Louisiana PSC has issued rules affirmatively to ensure that all CLECs — whether they proceed under the Statement's standard terms or tailored agreements — have access to the prerequisites for competition. See Woroch Aff. ¶¶ 51, 53; Louisiana Local Competition Order.

The Affidavit of Gary Wright describes the varied backgrounds and business plans of CLECs that have responded to the opportunities available in Louisiana. Eighteen CLECs have already ordered services from BellSouth for resale in Louisiana and CLECs are already serving a substantial number of customers and access lines on this basis and over their own networks. Wright Aff. ¶ 122; see also id. Attach. WLCE-G. As of September 30, 1997, CLECs had captured 3608 business lines and 3460 residential lines from BellSouth. Id.

Whether or not they yet qualify as Track A providers, CAPS such as ACSI, American MetroComm, KMC Telecom, and ITC DeltaCom, and cable television companies such as Cox, have facilities that could be utilized to offer telephone exchange service and are likely to be a source of facilities-based competition in a matter of months. Wright Aff. ¶¶ 17-41, 49-63, 75-86. ACSI, for example, has networks in New Orleans, Baton Rouge and Shreveport. Wright Aff.

¶ 18. American MetroComm has a fiber optic network and a Nortel DMS Central Office switch in New Orleans. Wright Aff. ¶ 32. KMC Telecom owns fiber optic networks in Baton Rouge and Shreveport and has installed local exchange switching facilities in both cities. See Wright Aff. ¶ 38 & Attach. WLCE-C. ITC DeltaCom provides exchange access over a series of fiber optic routes in Louisiana and throughout most of BellSouth's region. Wright Aff. ¶ 75. Cox's network passes 428,000 homes and currently serves about 275,000 cable television subscribers. Wright Aff. ¶ 52. The future facilities-based offerings of these traditional telecommunications carriers will be complemented by the competitive entry of Shell, which is making the transition to a full-scale CLEC with entry plans covering the entire State. Wright Aff. ¶ 47 & Attach. WLCE-D.

When these competitors choose to provide local service on a facilities basis, they will be able to compete for a substantial percentage of BellSouth's Louisiana revenues without even extending their networks or resorting to resale. See Wright Aff. ¶ 125; see also Attach. WLCE-A - WLCE-E (providing confidential figures). About 30 percent of BellSouth's Louisiana revenues are generated by customers connected to just 7 wire centers serving 2.0 percent of BellSouth's service area — the same area covered by the networks of potential facilities-based carriers. Wright Aff. ¶ 125 & Attach. WLCE-A-WLCE-E. This geographic concentration of revenues means that the threat of competition imposes significant competitive constraints on BellSouth, even though competition may not be widespread outside Louisiana's urban centers.

BellSouth also faces a competitive threat from wireless providers. As described earlier, these carriers price their services competitively with wireline services for some BellSouth wireline customers, and they can offer the advantages of mobility and one-stop shopping as well. See

supra Part I.C.3. Indeed, market factors in Louisiana such as long average loop lengths make wireless an especially attractive local entry strategy in the State. Woroch Aff. ¶ 88. In that regard, it is noteworthy that Cox, TCI and Comcast are equity partners in Sprint Spectrum's PCS venture in New Orleans, and that Sprint Spectrum has announced its intention to use the wireline networks of its cable television partners to accelerate the deployment of its PCS network infrastructure. Wright Aff. ¶¶ 58, 61. Other wireless carriers in Louisiana also are affiliated with wireline providers, positioning them to integrate wireless and wireline services as well. See Wright Aff. ¶¶ 104, 117-118.

The only obstacles preventing CLECs from competing fiercely with BellSouth are the CLECs' incentives to pursue more profitable markets and to protect long distance profits by keeping BellSouth out of interLATA services. Under the Act, the Commission simply may not delay interLATA relief until CLECs choose to confirm in the marketplace that they are viable, long-term competitors. Nor would such delay be sound policy. "[T]he social cost of such a delay," including foregone competition in the interLATA and local markets, "is prohibitive." Woroch Aff. ¶ 55. As former Chairman Hundt has put it, "[c]ompetition delayed is competition denied."⁹¹

CONCLUSION

Louisiana consumers have been denied the benefits of competitive interLATA and local telecommunications markets long enough. The Commission should end that situation, as

⁹¹. Separate Statement of Reed Hundt, Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses, FCC 97-342, WT Dkt 97-82, at 6 (rel. Oct. 16, 1997).

BellSouth, November 6, 1997, Louisiana

recommended by the Louisiana PSC, by authorizing BellSouth to provide in-region, interLATA services under section 271. Because BellSouth has satisfied all specific statutory prerequisites to provide interexchange services in Louisiana and such service would promote the public interest, the application should be granted.

Respectfully submitted,



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November 6, 1997

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Application by BellSouth Corporation,)
BellSouth Telecommunications, Inc., and)
BellSouth Long Distance, Inc., for) CC Docket No. _____
Provision of In-Region, InterLATA)
Services in Louisiana)

**DECLARATION AND VERIFICATION OF JIM O. LLEWELLYN AND ANTI-DRUG
ABUSE ACT CERTIFICATION OF BELL SOUTH CORPORATION**

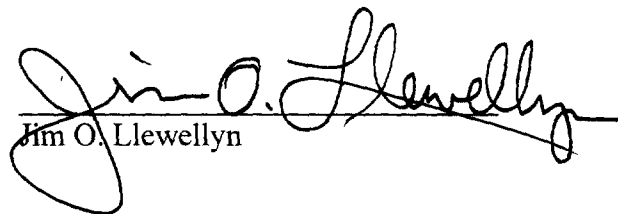
1. I, Jim O. Llewellyn, am a General Attorney at BellSouth Corporation. I am authorized to make this declaration on behalf of BellSouth Corporation.

2. I have reviewed the foregoing Brief in Support of Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana, and the materials filed in support of thereof.

3. The information contained in the application has been provided by persons with knowledge thereof. All information supplied in the application is true and accurate to the best of my knowledge, information, and belief formed after reasonable inquiry.

4. I further certify that BellSouth Corporation is not subject to a denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 853a.

I declare under penalty of perjury that the foregoing is true and correct. Executed on
November 4, 1997.


Jim O. Lewellyn

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Application by BellSouth Corporation,
BellSouth Telecommunications, Inc., and
BellSouth Long Distance, Inc., for
Provision of In-Region, InterLATA
Services in Louisiana

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CC Docket No. _____

**DECLARATION AND VERIFICATION OF STEPHEN M. KLIMACEK
AND ANTI-DRUG ABUSE ACT CERTIFICATION OF BELL SOUTH
TELECOMMUNICATIONS, INC.**

1. I, Stephen M. Klimacek, am a General Attorney at BellSouth Telecommunications, Inc. I am authorized to make this declaration on behalf of BellSouth Telecommunications.

2. I have reviewed the foregoing Brief in Support of Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Louisiana, and the materials filed in support thereof.

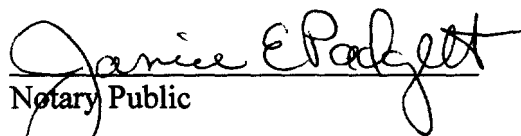
3. The information contained in the application has been provided by persons with knowledge thereof. All information supplied in the application is true and accurate to the best of my knowledge, information, and belief formed after reasonable inquiry.

4. I further certify that BellSouth Telecommunications, Inc. is not subject to a denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 853a.

I declare under penalty of perjury that the foregoing is true and correct. Executed on
November 4, 1997.


STEPHEN M. KLIMACEK

Sworn to and subscribed before me
this 4 day of November, 1997.


Notary Public

Notary Public, Gwinnett County, GA
My Commission Expires Feb. 19, 2000

I declare under penalty of perjury that the foregoing is true and correct. Executed on
November 4, 1997.


James G. Harrison

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